

1 KAMALA D. HARRIS
Attorney General of California
2 JOSE R. GUERRERO
Supervising Deputy Attorney General
3 LAWRENCE MERCER
Deputy Attorney General
4 State Bar No. 111898
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5539
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
PHYSICAL THERAPY BOARD OF CALIFORNIA
SACRAMENTO, CA May 23, 2013
BY C. Guiramenta ANALYST

7
8 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1D-2011-70619

11 **BARBARA JEAN GILLIARD, P.T.A.**
12 4713 Mariposa Creek Circle
Mariposa, CA 95338

ACCUSATION

13 License No. AT 4341

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Jason Kaiser (Complainant) brings this Accusation solely in his official capacity as
19 the Executive Officer of the Physical Therapy Board of California, Department of Consumer
20 Affairs.

21 2. On or about April 25, 1996, the Physical Therapy Board of California issued
22 Physical Therapist Assistant License Number AT 4341 to Barbara Jean Gilliard (Respondent).
23 Said license was in full force and effect at all times relevant to the charges brought herein and
24 will expire on June 30, 2013, unless renewed. On June 14, 2010, Respondent was issued Citation
25 No. 09-10-0527 arising from a February 23, 2010 conviction for violation of Vehicle Code
26 §23152(b), to wit: operation of a motor vehicle with a blood alcohol level greater than .08.
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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 493 of the Code states in relevant part:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to . . . suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the . . . licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of the discipline or to determine if the conviction is substantially related to the qualifications, functions and duties of the licensee in question.

5. Section 2660 of the Code states in relevant part:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

“...

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

“(e) Habitual intemperance.

“...

“(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting

1 the violation of, or conspiring to violate any provision or term of this chapter or of the Medical
2 Practice Act.

3 6. Section 2661 of the Code states:

4 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
5 charge of a felony or of any offense which substantially relates to the qualifications, functions, or
6 duties of a physical therapist is deemed to be a conviction within the meaning of this article. The
7 board may order the license suspended or revoked, or may decline to issue a license, when the
8 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
9 an order granting probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or
11 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
12 dismissing the accusation, information, or indictment."

13 7. Section 2239 of the Code states:

14 "(a) The use or prescribing for or administering to himself or herself, of any controlled
15 substance, or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
16 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
17 any other person or to the public, or to the extent that such use impairs the ability of the licensee
18 to practice medicine safely or more than one misdemeanor or any felony involving the use,
19 consumption, or self-administration of any of the substances referred to in this section, or any
20 combination thereof constitutes unprofessional conduct. The record of the conviction is
21 conclusive evidence of such unprofessional conduct.

22 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
23 deemed to be a conviction within the meaning of this section. The Division of Medical Quality
24 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
25 may order the denial of the license when the time for appeal has elapsed or the judgment of
26 conviction has been affirmed on appeal or when an order granting probation is made suspending
27 imposition of sentence irrespective of a subsequent order under the provision of Section 1203.4 of
28 the Penal code allowing such person to withdraw his or her plea of guilty and to enter a plea of

1 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
2 information, or indictment."

3 8. California Code of Regulations, title 16, section 1399.20, states:

4 "For the purposes of denial, suspension or revocation of a license, pursuant to Division 1.5
5 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially
6 related to the qualifications, functions or duties of a person holding a license under the Physical
7 Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a
8 person to perform the functions authorized by the license or approval in a manner consistent with
9 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
10 following:

11 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
12 violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

13 "(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with
14 the practice of physical therapy.

15 "(c) Violating or attempting to violate any provision or term of the Medical Practice Act."

16 9. Section 2661.6 of the Code states:

17 "(a) The board shall establish a probation monitoring program to monitor probationary
18 licenses.

19 "(b) The program may employ nonpeace officer staff to perform its probation monitoring.

20 "(c) The program shall be funded with moneys in the Physical Therapy Board."

21 COST RECOVERY

22 10. Section 2661.5 of the Code states:

23 "(a) In any order issued in resolution of a disciplinary proceeding before the board, the
24 board may request the administrative law judge to direct any licensee found guilty of
25 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of
26 the investigation and prosecution of the case.

27 "(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
28 any event be increased by the board. When the board does not adopt a proposed decision and

1 remands the case to an administrative law judge, the administrative law judge shall not increase
2 the amount of the assessed costs specified in the proposed decision.

3 "(c) When the payment directed in an order for payment of costs is not made by the
4 licensee, the board may enforce the order of payment by bringing an action in any appropriate
5 court. This right of enforcement shall be in addition to any other rights the board may have as to
6 any licensee directed to pay costs.

7 "(d) In any judicial action for the recovery of costs, proof of the board's decision shall be
8 conclusive proof of the validity of the order of payment and the terms for payment.

9 "(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the
10 license or approval of any person who has failed to pay all of the costs ordered under this section.

11 "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
12 reinstate for a maximum of one year the license or approval of any person who demonstrates
13 financial hardship and who enters into a formal agreement with the board to reimburse the board
14 within that one year period for those unpaid costs.

15 "(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund
16 as a reimbursement in either the fiscal year in which the costs are actually recovered or the
17 previous fiscal year, as the board may direct."

18 11. California Code of Regulations, title 16, section 1399.15 states, in relevant part:

19 "(a) In reaching a decision on a disciplinary action under the Administration Procedure Act
20 (Government Code Section 11400 et seq.), the Board shall consider the "Guidelines for Issuing
21 Citations and Imposing Discipline", (Revised August 2012, 4th Edition) which are hereby
22 incorporated by reference. Deviation from these guidelines and orders, including the standard
23 terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts
24 warrant such a deviation – for example: The presence of mitigating or aggravating factors; the age
25 of the case; evidentiary problems..."

26 12. Standard Probation Condition No. 19 of the Guidelines for Issuing Citations and
27 Imposing Discipline (Revised August 2012, 4th Edition) states:
28

1 “Respondent shall comply with all financial obligations required by this Order (e.g., cost
2 recovery, restitution, probation costs) not later than 180 calendar days prior to completion of
3 probation unless otherwise specified in Order. Upon successful completion of probation,
4 Respondent’s license shall be fully restored.”

5 13. Standard Probation Condition No. 22 of the Guidelines for Issuing Citations and
6 Imposing Discipline (Revised August 2012, 4th Edition) states:

7 “Respondent shall reimburse all costs incurred by the Board for probation monitoring
8 during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall
9 be made payable to the Physical Therapy Board of California and sent directly to the Physical
10 Therapy Board of California. Failure to make ordered reimbursement within sixty (60) days of the
11 billing shall constitute a violation of the probation order.”

12 FIRST CAUSE FOR DISCIPLINE

13 (Substantially Related Conviction – November 7, 2011)

14 14. Respondent’s license is subject to discipline for violating Business and Professions
15 Code sections 493 and 2660(d) and 16 CCR 1399.20 [substantially related conviction], in that she
16 has been convicted of a crime substantially related to the qualifications, functions and duties of a
17 physical therapy assistant. The circumstances are as follows:

18 A. On June 14, 2011, a liquor store clerk reported to an off duty Sheriff’s Deputy that
19 Respondent had attempted to purchase vodka, but had been refused service because she appeared
20 to be intoxicated. The clerk reported that Respondent was likely going to attempt to operate a
21 motor vehicle. The off duty officer observed Respondent get into the driver’s side door of a pick-
22 up truck and start the ignition. The off duty officer advised the Mariposa County Sheriff’s Office
23 of the incident and a uniformed officer was dispatched. Respondent was stopped by Sheriff’s
24 Deputies and she was unable to successfully perform field sobriety tests (FST’s). An evidential
25 preliminary alcohol screening (EPAS) was performed twice and showed a blood alcohol level of
26 .22 and .21 respectively. Respondent was arrested and charged with violation of Vehicle Code
27 §23152, to wit: driving under the influence of alcohol.
28

1 B. On June 29, 2011, a complaint was filed in Mariposa County Superior Court,
2 charging Respondent with two counts of misdemeanor drunk driving and alleging two special
3 circumstances, to wit: (1) A prior conviction on February 23, 2010, for DUI, arising from a
4 December 30, 2009 arrest (also in Mariposa County), and (2) a blood alcohol level in excess of
5 .15.

6 C. On November 7, 2011, Respondent entered a plea of no contest to violation of
7 Vehicle Code §23152(b), to wit: operation of a motor vehicle with a blood alcohol level greater
8 than .08.

9 D. As a matter in aggravation, Respondent was previously issued Citation No. 09-10-
10 0527 after her first DUI conviction, as set forth in Paragraph 2 of this Accusation, and she
11 committed a second, similar offense exactly one year later. The facts of the first incident are as
12 follows. On the evening of December 30, 2009, Respondent was driving her pick-truck when her
13 vehicle became stuck in the mud adjacent to the roadway. A passing Deputy Sheriff came upon
14 the incident and observed Respondent sitting in the driver's seat of the pick-up truck with the
15 motor running. He observed that Respondent's speech was slurred and that there was a moderate
16 odor of alcohol coming from her person. Respondent admitted to having too much to drink. A
17 California Highway Patrol Officer arrived and performed FST's, which Respondent was unable to
18 perform. A chemical breath test was later performed three times with results of .20, .17 and .18
19 respectively.

20 SECOND CAUSE FOR DISCIPLINE

21 (Excessive Use of Alcohol)

22 15. Respondent's license is subject to discipline for violating Business and Professions
23 Code sections 2660(e) [habitual intemperance] and/or (h) [violation of Medical Practice Act] and
24 Section 2239, in that she has consumed alcoholic beverages to an extent or in such a manner as to
25 be dangerous to herself or to the public. The circumstances are as follows:

26 A. Paragraphs 14(A)-(D) are incorporated in this, the Second Cause for Discipline, as
27 though fully set forth herein.

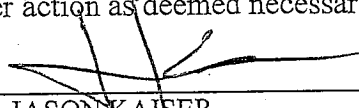
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending License Number AT 4341, issued to Respondent Barbara Jean Gilliard, P.T.A.;
2. Ordering Respondent to pay the Physical Therapy Board of California the actual and reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.5;
3. Ordering Respondent to pay the Physical Therapy Board of California the actual and reasonable costs of probation if placed on probation, pursuant to the Guidelines for Issuing Citations and Imposing Discipline; and
4. Taking such other and further action as deemed necessary and proper.

DATED: May 23, 2013


JASON KAISER
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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